

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LOUISE SPIERING, et al.,	)	4:04CV3385
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
	)	
GOVERNOR MIKE JOHANNNS, etc.,	)	
et al.,	)	
Defendants.	)	

This matter is before the court upon Defendants' February 10, 2005 motion to dismiss (filing 21). Since this document was filed, Plaintiffs have filed an Amended Complaint (filing 27) without prior leave of the court and Defendants have filed a motion to dismiss the amended complaint (filing 30).

Under Fed. R. Civ. P. 15(a), once a responsive pleading has been served, a complaint may be amended only by leave of court or by written consent of the adverse party. Although Plaintiffs did not seek leave of the court to file an amended complaint, Defendants have treated the amended complaint as properly filed by responding to it with a new motion to dismiss. Under the circumstances, I find that the Amended Complaint (filing 27) is properly filed. As filing of the Amended Complaint mooted the original motion to dismiss, I will deny it as moot.

IT IS ORDERED:

1. The Amended Complaint (filing 27) is properly filed;
2. Filing 21, the original motion to dismiss, is denied as moot; and

3. The only motion before the court is filing 30, the motion to dismiss the amended complaint. That motion will be ripe for decision after the response time has passed.

April 22, 2005.

BY THE COURT:

s/Richard G. Kopf  
United States District Judge